HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.951 of 2001
Old No. 4334 of 1998

1. Bharat Singh
   S/o Sri Jeet Singh
   Proprietor, Jeet Jewelers
   Bharat Mandir Road, Rishikesh
   District Dehradun
2. Shoorbir Singh
   S/o Sri Tonu Singh
   Proprietor, Garhwal Jewellers
   Jhanda Chowk, Rishikesh
   District Dehradun ... Applicants

Versus

State of Uttaranchal ... Respondents

Sri Lokendra Dobhal learned counsel for the revisionists.
Sri G.S. Sandhu learned A.G.A.

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the proceedings of criminal case No.1139/1998 State Vs. Bharat Singh and another under section 411 I.P.C. pending before the Chief Judicial Magistrate, Tehri Garhwal.

2. Brief facts of the case are that on 25.5.1987 an FIR was lodged by Maya Ram alleging therein that Bhag Singh, Chhota Lal, Raj Singh and Prem Singh have committed the theft in his house. The stolen articles are one golden 'nath' and one silver 'Hansuli' amounting to Rs.1550. Thereafter, the matter was investigated. During the investigation, it was revealed that the said 'nath' and 'Hansli' were sold to the applicants by one-Tusli S/o Sri Raithu. Thereafter, on 28.5.1987 the said 'nath' has been recovered from the shop of applicant No.1-Bharat Singh. On the same day, the said 'Hansuli'

has been recovered from the shop of applicant No.2-Shoorbir Singh. After completing the investigation, the police submitted the chargesheet against Bhag Singh, Chhota Lal, Raj Singh, Prem Singh and Tulsi. The applicants had stated under section 161 Cr.P.C. that the accused Tulsi has sold the stolen articles to them on the pretext that the said articles is belonged to him and he had necessity of money, therefore, he is selling the said ornaments. On 11.2.1988 the case of the accused Bhag Singh, Chhota Singh, Raj Singh and Prem Singh had been transferred to Juvenile Court because they were minor at the time of incident. The case of the accused Tulsi had been tried by the Chief Judicial Magistrate, Tehri Garhwal.

3. The prosecution in support of its case examined the witnesses. The learned Magistrate after appraisal of the evidence on record found the accused Tulsi guilty and convicted under section 380, 411 IPC and sentenced him to undergo for a period of 3 months and 29 days. The learned Magistrate also issued the notices under section 411 IPC against the present applicants. The Magistrate registered as criminal case No.1139/1998 State Vs. Bharat Singh & another under section 411 IPC. and notices were issued to the applicants as to why they should not be prosecuted under section 411 IPC. Objections were filed before the court below by the applicants and the objections were dismissed. Thereafter, the learned Magistrate summoned the applicants under section 411 IPC. Feeling aggrieved by this, the present petition has been filed.

4. I have heard the learned counsel for the parties and perused the evidence on record.

5. Learned counsel for the applicants contended that the learned Magistrate has illegally summoned the applicants under section 411 IPC. The applicants had not been charged nor there was any evidence on record against the applicants that they had knowledge that the accused Tulsi was selling the stolen articles. It was further contended that the court below had committed an illegality in issuing the notice against the applicants without considering the facts and circumstances of the case. It was further contended that the applicants were the prosecution witnesses and they appeared before the court as PW7 & PW8. They have fully supported the prosecution case. This, the order of the learned Magistrate is bad in law. Perusal of the record reveals that during the course of investigation and recording the statements on 28.5.1987 the stolen 'Nath' has been recovered from the shop of applicant No.4-Bharat Singh and on the same day the stolen 'Hansuli' has been recovered from the shop of applicant No.2-Shoorbir Singh. It is the prosecution version that the accused Tulsi had sold the articles to the applicants by saying that the said articles belong to him and he had necessity of money, therefore, he was selling the said articles. Moreover, the receipts of selling articles were given to the applicants by the accused Tulsi. Both the applicants had appeared before the court as PW7 & PW8 to support the prosecution story. Before proceedings against the applicants, the Magistrate should have recorded the finding that the applicants had knowledge about the stolen articles when the accused Tulsi sold them. The Magistrate should have stated the reasons for believing that the property was stolen and the applicants had knowledge that the accused is selling the stolen property

to them. There is no finding of the court below in its judgment with regard to the prima-facie case under section 411 IPC against the applicants. The Court has power under section 319 Cr.P.C. to proceed against other persons appearing to be guilty of offence (i) where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed. In the instant case, there was no evidence on record that the applicants had knowledge about the stolen articles at the time of purchase of property. The Magistrate had no power after conclusion of the trial to summon another person under section 319 Cr.P.C. In view of the foregoing discussion, I am completely in agreement with the contentions of the learned counsel for the applicants.

6. In view of the above foregoing discussion, I am of view that the proceedings of criminal case No.1139/1998 State Vs. Bharat Singh and another under section 411 I.P.C. pending before the Chief Judicial Magistarte, Tehri Garhwal is liable to be quashed and are quashed as such.

7. The petition is allowed accordingly.

(J. C. S. Rawat, J.)

Dated 06.03.2006

LSR